

REMARKS

This Amendment is filed in response to the Office Action mailed November 10, 2005, in which the Examiner enters a restriction requirement between claims 1-22 and claim 23, rejects claims 1-19, and objects to claims 20-22. The Examiner also objects to the abstract, specification and claims 14-17 for informalities and to the drawings under 37 CFR § 1.83(a) for not showing every feature of the invention specified in claims 6-9. Claims 1, 8, 13-17 and 20-23 have been amended. Claims 1-23 are pending in this application.

The Applicants wish to thank the Examiner for indicating allowable subject matter in claims 20-22. Claim 20 has been placed in independent form and claims 21 and 22 have been amended to depend from claim 20. Accordingly, all three of these claims are now allowable.

The specification, abstract and claims 14-17 have been amended in response to the Examiners objections to these portions. Claim 13 has been amended to replace the word "comprises" to "comprise". Claims 1, 8 and 23 have been amended to comply with 35 U.S.C. § 112.

A. Restriction Requirement under 35 U.S.C. § 121.

The Examiner restricts the pending claims between claims 1-22 and claim 23, on the grounds that the device of the former set can be used in a materially different process such as for loosening up soil. However, the preamble for the only device claim expressly recites "A device for use in removing a meat of a piece of fruit from a skin of the piece of fruit after the meat has been exposed", thus, the device is not intended for loosening up soil. Applicants respectfully assert that the two sets of claims are directed toward a single invention, more particularly, they are directed toward a device and a method for using the same device. Applicants respectfully submit that any additional burden to the Examiner will not be significant if both sets of claims are retained in the present application. Applicants therefore have maintained all pending claims in the present application. Should the Examiner not withdraw the

restriction requirement, the Applicants elect claims 1-22 for further prosecution in the present application, without prejudice to future prosecution of the non-elected claims.

B. Drawings Objection Under 37 CFR § 1.83(a).

The Examiner has objected to the drawings, asserting that the constant cross-sectional shape and other qualities thereof, cited in claims 6-9, must be shown. The Applicants respectfully submit that the drawings illustrate sufficient features for a proper understanding of the invention as claimed. For example, Figures 1-3 show different views of the device, clearly demonstrating that the elongated blade and the lateral extensions have a constant cross-sectional shape as recited in claim 6, and that the elongated blade has a cross-sectional shape elongated in a cutting direction as recited in claim 7. With respect to claim 8, Figure 3 illustrates that the elongated blade has a cross-sectional shape terminating in opposing edges and, as shown in Figure 1, at least one edge being pointed. Figure 5 illustrates that the elongated blade has a cross-sectional shape comprising two opposing surfaces terminating in opposing edges, at least one of the opposing surfaces being curved as shown in Figure 3. Accordingly, the Figures illustrate sufficient features for a proper understanding of the invention and the Applicants respectfully request that the Examiner withdraw the objection to the drawings.

C. Claims Rejection Under 35 U.S.C. § 102(b)/103.

The Examiner has rejected claims 1, 2, 5, 6, 7, 9, and 11-19 as being anticipated by U.S. Patent No. 924,124 to Worcester. Applicants respectfully traverse this rejection. As indicated in the amendment above and the comments below, the Worcester reference does not anticipate the present invention. In addition, to rely on a reference under § 103, it must be analogous prior art. In order for it to be analogous art, the reference must either be in the field of applicant's endeavor, or, if not, must be reasonably pertinent to the particular problem with which the inventor is concerned. See MPEP 2141.01(a). The present invention is directed toward devices and methods for removing the skin from a piece of fruit and/or for slicing the meat of the fruit. In contrast, Worcester is concerned with a weeder for use in the garden to

remove weeds or loosen soil. (Page 2, lines 10-13). Therefore, the invention in Worcester is not in the field of the applicant's endeavor.

Even if not in the field of applicant's endeavor, a reference is reasonably pertinent if it is one that, because of the matter with which it deals, logically would have commended itself to an inventor's attention in considering his problem. See MPEP 2141.01(a). This is not the case in the present application. The inventors of the present invention are concerned with a device for removing the skin from a piece of fruit and/or for slicing the meat thereof. There is nothing about a garden hoe or a weeder for use in a garden that would commend itself to the present inventors' attention in considering their problem with respect to skinning and slicing the meat of a fruit. Applicants also understand that the PTO classification is not definitive in answering the question of whether a prior art reference is analogous; however, difference in classification is some evidence of analogy, or lack thereof. Given the very different nature of the structure and function of the devices, and the associated classifications, Applicants respectfully submit that Worcester is not analogous art.

Even if Worcester were considered analogous, it does not teach or suggest every element as set forth in amended independent claim 1. Claim 1 discloses a pair of lateral extensions coupling opposing ends of the elongated blade to the handle portion. In contrast, the blade 7 in Worcester is simply a single integral piece or flat ribbon of thin spring, the ends of which are forced by an annular plug 10 against the interior walls of the chamber formed by the ferrule 2. (Page 1, lines 44-45 and 57-60).

Furthermore, claim 1, as amended, discloses at least one of the lateral extensions being manipulable under a direct manual force during use to deform the working portion from the resting configuration to a displaced configuration in which the elongated blade has a second radius of curvature, one of the lateral extensions being sufficiently proximate the other of the lateral extensions to allow the individual to selectively conform the curvature of the elongated blade to the curvature of the skin, using the one hand that is also used in conjunction with the handle to manually manipulate the device. The Worcester disclosure fails to teach or suggest a structure that can be manipulated under direct manual force, using the one hand that is also used to manually manipulate the device, to a displaced configuration, conforming the curvature of the

blade to the curvature of the skin of a fruit. The handle 1 in Worcester is intended to fit the grasp of the operator. (Page 1, lines 33-37). Nothing in the Worcester disclosure suggests otherwise, nor does it suggest that the user manually modify the curvature of the blade 7. Even if the user moves his or her hand further up the ferrule 2 to attempt to manually deform the blade 7, the user will not be able to manually manipulate the device as intended because the user no longer is grasping the handle 1, which is inherently necessary due to the purpose of the device, i.e., digging in the dirt. Furthermore, the Worcester device lacks the lateral extensions being manipulable under a direct manual force during use to deform the working portion from the resting configuration to a displaced configuration in which the elongated blade has a second radius of curvature.

In order to support a finding of anticipation under 35 U.S.C. § 102(b), MPEP § 2131 states that a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. Since Worcester fails to describe every element set forth in amended claim 1, it does not support a finding of anticipation and claim 1 and all claims dependent therefrom are allowable over Worcester. Further, because the Worcester reference does not teach or suggest a device having all of the claimed features, the present invention is also patentable under § 103 over Worcester.

The Examiner has also rejected claims 1-8 as being anticipated by U.S. Patent No. 5,937,524, to Hornsby. Claim 1, as amended, recites, at least one of the lateral extensions being manipulable under a direct manual force during use. (Emphasis added). Claim 1 further adds one of the lateral extensions being sufficiently proximate the other of the lateral extensions to allow the individual to selectively conform the curvature of the elongated blade to the curvature of the skin, using one hand, before and as the elongated blade moves through the meat of the fruit. (Emphasis added).

In contrast, the tool in Hornsby can only assume either a substantially closed loop configuration or a substantially U-shaped configuration. (Col. 4, lines 32-39). The blade 23 remains rigid in the selected configuration during use and does not allow the user to selectively conform the curvature of the blade 23 to the curvature of the skin of the melon before and as the blade 23 moves through the melon. This is because Hornsby is only concerned with removing

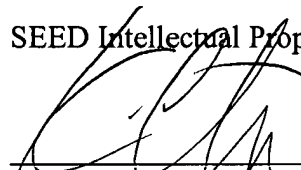
melon from rind, recognizing that melons generally come in either a spherical configuration 18 or an elongated configuration 20. (Col. 4, lines 63-64). Even if the user can adjust the blade curvature in the U-shaped configuration of Hornsby, the user would have to use both hands; one for each end of the blade. (Col. 4, lines 46-50). Therefore, in contrast to the device of the present invention, Hornsby does not allow the user to hold a fruit with one hand and manipulate the device and the curvature of the blade with the other hand during use, to remove the meat of the fruit. Further, in the U-shaped configuration, the device in Hornsby does not have a handle portion adapted to allow an individual to manually manipulate the device using one hand, as recited in amended claim 1. Additionally, Hornsby fails to disclose a pair of lateral extensions coupling opposing ends of the elongated blade, as recited in claim 1. Since Hornsby fails to disclose every element set forth in amended claim 1, it does not support a finding of anticipation and claim 1 and all claims dependent therefrom are patentable under § 102 over Hornsby. Further, because the Hornsby reference does not teach or suggest a device having all the claimed features, the present invention is also patentable under § 103 over Hornsby.

Accordingly, the Applicants respectfully submit that all of the claims remaining in the application are now allowable and earnestly solicit favorable consideration and a Notice of Allowance.

The Director is authorized to charge any additional fees due by way of this Amendment, or credit any overpayment, to our Deposit Account No. 19-1090.

Respectfully submitted,

SEED Intellectual Property Law Group PLLC



Kevin S. Costanza

Registration No. 37,801

KSC/NAS:ljs

Enclosure: Postcard

701 Fifth Avenue, Suite 6300
Seattle, Washington 98104-7092
Phone: (206) 622-4900
Fax: (206) 682-6031

726620_1.DOC